IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 385 OF 2005

Shri Shivaji Dhondiba Ubhe ..Appellant

Vs.

Smt. Krushnabai Balwant Dube ..Respondent

Mr. V.B. Tapkir for appellant.

CORAM: B.H. MARLAPALLE, J.

Date : April 10, 2007.

P.C.:

1. Heard Mr. Tapkir the learned counsel for the appellant-defendant in RCS No.46 of 1984. The plaintiff in the said suit had prayed for specific performance of agreement for sale dated 18/5/1979 in respect of the suit land, more particularly described in para 1 of the plaint. It was contended that the total consideration agreed for the same was Rs.6000/- and on execution of the agreement for sale, an amount of Rs.4000/- was paid to the defendant. The defendant also placed the plaintiff in possession of the suit land and the remaining amount of Rs.2000/- was to be

paid at the time the sale deed is signed. It was further agreed that the sale deed was to be executed within five years from the date of signing of the agreement for sale i.e. from 18/5/1979. The plaintiff had issued first notice on 15/7/1983 under the RPAD to the defendant calling upon him to execute the sale deed and receive the balance amount of Rs.2000/-.

2. The defendant filed his Written Statement at Exh.8 and denied the claim, including having signed the agreement for sale on 18/5/1979. In the alternative, it was contended that in any case it was the collateral security furnished for the amount of loan and it was not an out and out sale transaction. The defendant also claimed that the plaintiff did not show her readiness and willingness to get the sale deed executed and to pay the balance amount of Rs.2000/-. The trial court after assessing the evidence both oral as well as documentary, held that an agreement for sale was signed between the parties on 18/5/1979 and that it was not a collateral security but in deed it was out and out sale transaction. The

trial court refused to grant decree in favour of the plaintiff solely on the ground that the plaintiff failed to prove her readiness and willingness to get the sale deed executed and to pay the balance amount of Rs.2000/-. The plaintiff, therefore, filed Civil Appeal No.737 of 1996 and while allowing the same by his Judgment and Order dated 16/10/1998 the learned 6th Additional District Judge at Pune set aside the trial court's order and the suit was partly decreed. The plaintiff has been directed to deposit Rs.2000/- within 15 days from the date of the decree and on the deposit of the said amount, the defendant shall execute the sale deed within one month. Hence this second appeal.

3. There is no dispute that both the courts below have recorded a concurrent finding on the execution of the agreement for sale (Exh.32) and that it was a transaction of out and out sale of the suit land. On the issue of the plaintiff's readiness and willingness, the Lower Appellate Court noted that the agreement was executed on 18/5/1979 and it was agreed that the sale deed would be executed within a period

of five years therefrom. This period of five years would expire on 17/5/1984. However, the trial court held against the plaintiff solely on the ground that from 18/5/1979 to Chaitra month 1983 no steps were taken by the plaintiff to show her readiness and willingness to perform her part of the contract and it was for the first time that the notice was issued on 15/7/1983 at Exh.33. The trial court further noted that after receipt of the notice dated 15/7/1983 by the defendant, it was not necessary for the plaintiff to wait for a period of eight months to file the suit. The Lower Appellate Court rightly stepped in and referred to the provisions of Section 20 of the Specific Relief Act. When the execution of the document was agreed to be within a period of five years and the plaintiff had taken steps within that period or immediately thereafter, would certainly entitle the plaintiff for the decree of the specific performance. When the execution of the agreement for sale is proved and contention that it was a collateral security was rejected, specific performance would follow as a rule and refusal could have been in exceptional circumstances, but the refusal by the

trial court on the ground that no steps were taken by the plaintiff prior to Chaitra month of 1983 or 15/7/1983 was a perverse finding. The Lower Appellate Court, therefore, corrected the same and decree the suit.

4. In the above circumstances, in this appeal any other substantial question of law does not arise and, therefore, this appeal must fail at the threshold.

5. The appeal is hereby dismissed in limine.

(B.H. Marlapalle,J.)